

**H. B. 3040**

(By Delegates Howell, Armstead, R. Phillips, Andes,  
Storch, Lynch, Moye, Miller, Hartman, Craig and Espinosa)

[Introduced March 21, 2013; referred to the  
Committee on Energy, Industry and Labor, Economic  
Development and Small Business then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-6F-2 of the Code of West Virginia,  
1931, as amended; and to amend and reenact §11-13S-3 and  
§11-13S-4 of said code, all relating generally to the tax  
treatment of manufacturing entities generally; amending  
definition of manufacturing for purposes of special method for  
appraising qualified capital additions to manufacturing  
facilities for property tax purposes; amending definition of  
manufacturing for purposes of manufacturing investment tax  
credit; and the amount of credit allowed for manufacturing  
investment, to include small arms manufacturing.

*Be it enacted by the Legislature of West Virginia:*

That §11-6F-2 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted; and that §11-13S-3 and §11-13S-4 of said  
code be amended and reenacted, all to read as follows:

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL**

1                                   **ADDITIONS TO MANUFACTURING FACILITIES.**

2 **§11-6F-2. Definitions.**

3           As used in this article, the term:

4           (a) "Certified capital addition property" means all real  
5 property and personal property included within or to be included  
6 within a qualified capital addition to a manufacturing facility  
7 that has been certified by the State Tax Commissioner in accordance  
8 with section four of this article: *Provided*, That airplanes and  
9 motor vehicles licensed by the Division of Motor Vehicles shall in  
10 no event constitute certified capital addition property.

11           (b) "Manufacturing" means any business activity classified as  
12 having a sector identifier, consisting of the first two digits of  
13 the six-digit North American Industry Classification System code  
14 number of thirty-one, thirty-two or thirty-three or the six digit  
15 code number 211112; or, the six-digit North American Industry  
16 Classification System code numbers 332992 and 332994.

17           (c) "Manufacturing facility" means any factory, mill, chemical  
18 plant, refinery, warehouse, building or complex of buildings,  
19 including land on which it is located, and all machinery,  
20 equipment, improvements and other real property and personal  
21 property located at or within the facility used in connection with  
22 the operation of the facility in a manufacturing business.

23           (d) "Personal property" means all property specified in  
24 subdivision (q), section ten, article two, chapter two of this code

1 and includes, but is not limited to, furniture, fixtures, machinery  
2 and equipment, pollution control equipment, computers and related  
3 data processing equipment, spare parts and supplies.

4 (e) "Qualified capital addition to a manufacturing facility"  
5 means either:

6 (1) All real property and personal property, the combined  
7 original cost of which exceeds \$50 million to be constructed,  
8 located or installed at or within two miles of a manufacturing  
9 facility owned or operated by the person making the capital  
10 addition that has a total original cost before the capital addition  
11 of at least \$100 million. If the capital addition is made in a  
12 steel, chemical or polymer alliance zone as designated from  
13 time-to-time by executive order of the Governor, then the person  
14 making the capital addition may for purposes of satisfying the  
15 requirements of this subsection join in a multiparty project with  
16 a person owning or operating a manufacturing facility that has a  
17 total original cost before the capital addition of at least \$100  
18 million if the capital addition creates additional production  
19 capacity of existing or related products or feedstock or derivative  
20 products respecting the manufacturing facility, consists of a  
21 facility used to store, handle, process or produce raw materials  
22 for the manufacturing facility, consists of a facility used to  
23 store, handle or process natural gas to produce fuel for the  
24 generation of steam or electricity for the manufacturing facility

1 or consists of a facility that generates steam or electricity for  
2 the manufacturing facility, including but not limited to a facility  
3 that converts coal to a gas or liquid for the manufacturing  
4 facility's use in heating, manufacturing or generation of  
5 electricity. Beginning on and after July 1, 2011, when the new  
6 capital addition is a facility that is or will be classified under  
7 the North American Industry Classification System with a six digit  
8 code number 211112, or is a manufacturing facility that uses  
9 product produced at a facility with code number 211112, then  
10 wherever the term "100 million" is used in this subsection, the  
11 term "20 million" shall be substituted and where the term "50  
12 million" is used, the term "10 million" shall be substituted; and  
13 that beginning on and after July 1, 2013, when the new capital  
14 addition is a facility that is or will be classified under the  
15 North American Industry Classification System with a six-digit  
16 North American Industry Classification System code a product  
17 produced at a facility with code numbers 332992 and 332994, then  
18 wherever the term "100 million" is used in this subsection, the  
19 term "2 million" shall be substituted and where the term "50  
20 million" is used, the term "1 million" shall be substituted; or

21 (2) (A) All real property and personal property, the combined  
22 original cost of which exceeds \$2 billion to be constructed,  
23 located or installed at a facility, or a combination of facilities  
24 by a single entity or combination of entities engaged in a unitary

1 business, that:

2 (i) Is or will be classified under the North American Industry  
3 Classification System with a six digit code number 211112, or, the  
4 six-digit North American Industry Classification System code  
5 numbers 332992 and 332994; or

6 (ii) Is a manufacturing facility that uses one or more  
7 products produced at a facility with code number 211112; or, the  
8 six-digit North American Industry Classification System code  
9 numbers 332992 and 332994; or

10 (iii) Is a manufacturing facility that uses one or more  
11 products produced at a facility described in subparagraph (ii) of  
12 this subdivision.

13 (B) No preexisting investment made, or in place before the  
14 capital addition shall be required for property specified in this  
15 subdivision (2). The requirements set forth in subdivision (1) of  
16 this subsection shall not apply to property specified in this  
17 subdivision (2) relating to:

18 (i) Location or installation of investment at or within two  
19 miles of a manufacturing facility owned or operated by the person  
20 making the capital addition;

21 (ii) Total original cost of preexisting investment before the  
22 capital addition of at least \$100 million or \$20 million; or

23 (iii) Multiparty projects.

24 (f) "Real property" means all property specified in

1 subdivision (p), section ten, article two, chapter two of this code  
2 and includes, but is not limited to, lands, buildings and  
3 improvements on the land such as sewers, fences, roads, paving and  
4 leasehold improvements: *Provided*, That for capital additions  
5 certified on or after July 1, 2011, the value of the land before  
6 any improvements shall be subtracted from the value of the capital  
7 addition and the unimproved land value shall not be given salvage  
8 value treatment.

9 **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

10 **§11-13S-3. Definitions.**

11 (a) Any term used in this article has the meaning ascribed by  
12 this section unless a different meaning is clearly required by the  
13 context of its use or by definition in this article.

14 (b) For purpose of this article, the term:

15 (1) "Eligible taxpayer" means an industrial taxpayer who  
16 purchases new property for the purpose of industrial expansion or  
17 for the purpose of industrial revitalization of an existing  
18 industrial facility in this state.

19 (2) "Industrial expansion" means capital investment in a new  
20 or expanded industrial facility in this state.

21 (3) "Industrial facility" means any factory, mill, plant,  
22 refinery, warehouse, building or complex of buildings located  
23 within this state, including the land on which it is located, and  
24 all machinery, equipment and other real and tangible personal

1 property located at or within the facility primarily used in  
2 connection with the operation of the manufacturing business.

3 (4) "Industrial revitalization" or "revitalization" means  
4 capital investment in an industrial facility located in this state  
5 to replace or modernize buildings, equipment, machinery and other  
6 tangible personal property used in connection with the operation of  
7 the facility in an industrial business of the taxpayer including  
8 the acquisition of any real property necessary to the industrial  
9 revitalization.

10 (5) "Industrial taxpayer" means any taxpayer who is primarily  
11 engaged in a manufacturing business.

12 (6) "Manufacturing" means any business activity classified as  
13 having a sector identifier, consisting of the first two digits of  
14 the six-digit North American Industry Classification System code  
15 number, of thirty-one, thirty-two or thirty-three or the six digit  
16 code number 211112 or the six digit code number 211112 or the  
17 six-digit North American Industry Classification System code  
18 numbers 332992 and 332994.

19 (7) "Property purchased for manufacturing investment" means  
20 real property, and improvements thereto, and tangible personal  
21 property but only if the property was constructed or purchased on  
22 or after January 1, 2003, for use as a component part of a new,  
23 expanded or revitalized industrial facility. This term includes  
24 only that tangible personal property with respect to which

1 depreciation, or amortization in lieu of depreciation, is allowable  
2 in determining the federal income tax liability of the industrial  
3 taxpayer, that has a useful life, at the time the property is  
4 placed in service or use in this state, of four years or more.  
5 Property acquired by written lease for a primary term of ten years  
6 or longer, if used as a component part of a new or expanded  
7 industrial facility, is included within this definition.

8 (A) "Property purchased for manufacturing investment" does not  
9 include:

10 (i) Repair costs, including materials used in the repair,  
11 unless for federal income tax purposes, the cost of the repair must  
12 be capitalized and not expensed;

13 (ii) Motor vehicles licensed by the Department of Motor  
14 Vehicles;

15 (iii) Airplanes;

16 (iv) Off-premises transportation equipment;

17 (v) Property which is primarily used outside this state; and

18 (vi) Property which is acquired incident to the purchase of  
19 the stock or assets of an industrial taxpayer which property was or  
20 had been used by the seller in his or her industrial business in  
21 this state or in which investment was previously the basis of a  
22 credit against tax taken under any other article of this chapter.

23 (B) Purchases or acquisitions of land or depreciable property  
24 qualify as purchases of property purchased for manufacturing



1 investment for purposes of this article only if:

2 (i) The property is not acquired from a person whose  
3 relationship to the person acquiring it would result in the  
4 disallowance of deductions under section 267 or 707(b) of the  
5 United States Internal Revenue Code of 1986, as amended;

6 (ii) The property is not acquired from a related person or by  
7 one component member of a controlled group from another component  
8 member of the same controlled group. The Tax Commissioner may  
9 waive this requirement if the property was acquired from a related  
10 party for its then fair market value; and

11 (iii) The basis of the property for federal income tax  
12 purposes, in the hands of the person acquiring it, is not  
13 determined, in whole or in part, by reference to the federal  
14 adjusted basis of the property in the hands of the person from whom  
15 it was acquired or under Section 1014(e) of the United States  
16 Internal Revenue Code of 1986, as amended.

17 (8) "Qualified manufacturing investment" means that amount  
18 determined under section five of this article as qualified  
19 manufacturing investment.

20 (9) "Taxpayer" means any person subject to any of the taxes  
21 imposed by article thirteen-a, twenty-three or twenty-four of this  
22 chapter or any combination of those articles of this chapter.

23 **§11-13S-4. Amount of credit allowed for manufacturing investment.**

24 (a) *Credit allowed.* -- There is allowed to eligible taxpayers

1 and to persons described in subdivision (5), subsection (b) of this  
2 section a credit against the taxes imposed by articles thirteen-a,  
3 twenty-three and twenty-four of this chapter: *Provided*, That a tax  
4 credit for any eligible taxpayer operating a business activity  
5 classified as having a sector identifier, consisting of the six  
6 digit code number 211112 or, the six-digit North American Industry  
7 Classification System code numbers 332992 and 332994 such eligible  
8 taxpayer must comply with the provisions of subsection (e) of this  
9 section for all construction related thereto in order to be  
10 eligible for any credit under this article. The amount of credit  
11 shall be determined as hereinafter provided in this section.

12 (b) *Amount of credit allowable.* -- The amount of allowable  
13 credit under this article is equal to five percent of the qualified  
14 manufacturing investment (as determined in section five of this  
15 article) and shall reduce the severance tax, imposed under article  
16 thirteen-a of this chapter, the business franchise tax imposed  
17 under article twenty-three of this chapter and the corporation net  
18 income tax imposed under article twenty-four of this chapter, in  
19 that order, subject to the following conditions and limitations:

20 (1) The amount of credit allowable is applied over a ten-year  
21 period, at the rate of one-tenth thereof per taxable year,  
22 beginning with the taxable year in which the property purchased for  
23 manufacturing investment is first placed in service or use in this  
24 state;

1           (2) *Severance tax.* -- The credit is applied to reduce the  
2 severance tax imposed under article thirteen-a of this chapter  
3 (determined before application of the credit allowed by section  
4 three, article twelve-b of this chapter and before any other  
5 allowable credits against tax and before application of the annual  
6 exemption allowed by section ten, article thirteen-a of this  
7 chapter). The amount of annual credit allowed may not reduce the  
8 severance tax, imposed under article thirteen-a of this chapter,  
9 below fifty percent of the amount which would be imposed for such  
10 taxable year in the absence of this credit against tax: *Provided,*  
11 That for tax years beginning on and after January 1, 2009, the  
12 amount of annual credit allowed may not reduce the severance tax,  
13 imposed under article thirteen-a of this chapter, below forty  
14 percent of the amount which would be imposed for such taxable year  
15 in the absence of this credit against tax. When in any taxable  
16 year the taxpayer is entitled to claim credit under this article  
17 and article thirteen-d of this chapter, the total amount of all  
18 credits allowable for the taxable year may not reduce the amount of  
19 the severance tax, imposed under article thirteen-a of this  
20 chapter, below fifty percent of the amount which would be imposed  
21 for such taxable year (determined before application of the credit  
22 allowed by section three, article twelve-b of this chapter and  
23 before any other allowable credits against tax and before  
24 application of the annual exemption allowed by section ten, article

1 thirteen-a of this chapter): *Provided, however,* That when in any  
2 taxable year beginning on and after January 1, 2009, the taxpayer  
3 is entitled to claim credit under this article and article  
4 thirteen-d of this chapter, the total amount of all credits  
5 allowable for the taxable year may not reduce the amount of the  
6 severance tax imposed under article thirteen-a of this chapter,  
7 below forty percent of the amount which would be imposed for such  
8 taxable year as determined before application of the credit allowed  
9 by section three, article twelve-b of this chapter and before any  
10 other allowable credits against tax and before application of the  
11 annual exemption allowed by section ten, article thirteen-a of this  
12 chapter;

13       (3) *Business franchise tax.* --

14       After application of subdivision (2) of this subsection, any  
15 unused credit is next applied to reduce the business franchise tax  
16 imposed under article twenty-three of this chapter (determined  
17 after application of the credits against tax provided in section  
18 seventeen, article twenty-three of this chapter, but before  
19 application of any other allowable credits against tax). The  
20 amount of annual credit allowed will not reduce the business  
21 franchise tax, imposed under article twenty-three of this chapter,  
22 below fifty percent of the amount which would be imposed for such  
23 taxable year in the absence of this credit against tax: *Provided,*  
24 That for tax years beginning on and after January 1, 2009, the

1 amount of annual credit allowed will not reduce the business  
2 franchise tax, imposed under article twenty-three of this chapter,  
3 below forty percent of the amount which would be imposed for such  
4 taxable year in the absence of this credit against tax. When in  
5 any taxable year the taxpayer is entitled to claim credit under  
6 this article and article thirteen-d of this chapter, the total  
7 amount of all credits allowable for the taxable year will not  
8 reduce the amount of the business franchise tax, imposed under  
9 article twenty-three of this chapter, below fifty percent of the  
10 amount which would be imposed for the taxable year (determined  
11 after application of the credits against tax provided in section  
12 seventeen, article twenty-three of this chapter, but before  
13 application of any other allowable credits against tax): *Provided,*  
14 *however,* That when in any taxable year beginning on and after  
15 January 1, 2009, the taxpayer is entitled to claim credit under  
16 this article and article thirteen-d of this chapter, the total  
17 amount of all credits allowable for the taxable year will not  
18 reduce the amount of the business franchise tax, imposed under  
19 article twenty-three of this chapter, below forty percent of the  
20 amount which would be imposed for the taxable year as determined  
21 after application of the credits against tax provided in section  
22 seventeen, article twenty-three of this chapter, but before  
23 application of any other allowable credits against tax;

24 (4) *Corporation net income tax.* --

1       After application of subdivision (3) of this subsection, any  
2 unused credit is next applied to reduce the corporation net income  
3 tax imposed under article twenty-four of this chapter (determined  
4 before application of any other allowable credits against tax).  
5 The amount of annual credit allowed will not reduce corporation net  
6 income tax, imposed under article twenty-four of this chapter,  
7 below fifty percent of the amount which would be imposed for such  
8 taxable year in the absence of this credit against tax: *Provided,*  
9 That for tax years beginning on and after January 1, 2009, the  
10 amount of annual credit allowed will not reduce corporation net  
11 income tax, imposed under article twenty-four of this chapter,  
12 below forty percent of the amount which would be imposed for such  
13 taxable year in the absence of this credit against tax. When in  
14 any taxable year the taxpayer is entitled to claim credit under  
15 this article and article thirteen-d of this chapter, the total  
16 amount of all credits allowable for the taxable year may not reduce  
17 the amount of the corporation net income tax, imposed under article  
18 twenty-four of this chapter, below fifty percent of the amount  
19 which would be imposed for the taxable year (determined before  
20 application of any other allowable credits against tax): *Provided,*  
21 *however,* That when in any taxable year beginning on and after  
22 January 1, 2009, the taxpayer is entitled to claim credit under  
23 this article and article thirteen-d of this chapter, the total  
24 amount of all credits allowable for the taxable year may not reduce

1 the amount of the corporation net income tax, imposed under article  
2 twenty-four of this chapter, below forty percent of the amount  
3 which would be imposed for the taxable year as determined before  
4 application of any other allowable credits against tax;

5 (5) *Pass-through entities.* --

6 (A) If the eligible taxpayer is a limited liability company,  
7 small business corporation or a partnership, then any unused credit  
8 (after application of subdivisions (2), (3) and (4) of this  
9 subsection) is allowed as a credit against the taxes imposed by  
10 article twenty-four of this chapter on owners of the eligible  
11 taxpayer on the conduit income directly derived from the eligible  
12 taxpayer by its owners. Only those portions of the tax imposed by  
13 article twenty-four of this chapter that are imposed on income  
14 directly derived by the owner from the eligible taxpayer are  
15 subject to offset by this credit.

16 (B) The amount of annual credit allowed will not reduce  
17 corporation net income tax, imposed under article twenty-four of  
18 this chapter, below fifty percent of the amount which would be  
19 imposed on the conduit income directly derived from the eligible  
20 taxpayer by each owner for such taxable year in the absence of this  
21 credit against the taxes (determined before application of any  
22 other allowable credits against tax): *Provided*, That for tax years  
23 beginning on and after January 1, 2009, the amount of annual credit  
24 allowed will not reduce corporation net income tax, imposed under

1 article twenty-four of this chapter, below forty percent of the  
2 amount which would be imposed on the conduit income directly  
3 derived from the eligible taxpayer by each owner for such taxable  
4 year in the absence of this credit against the taxes as determined  
5 before application of any other allowable credits against tax.

6 (C) When in any taxable year the taxpayer is entitled to claim  
7 credit under this article and article thirteen-d of this chapter,  
8 the total amount of all credits allowable for the taxable year will  
9 not reduce the corporation net income tax imposed on the conduit  
10 income directly derived from the eligible taxpayer by each owner  
11 below fifty percent of the amount that would be imposed for such  
12 taxable year on the conduit income (determined before application  
13 of any other allowable credits against tax): *Provided*, That when in  
14 any taxable year beginning on and after January 1, 2009, the  
15 taxpayer is entitled to claim credit under this article and article  
16 thirteen-d of this chapter, the total amount of all credits  
17 allowable for the taxable year will not reduce the corporation net  
18 income tax imposed on the conduit income directly derived from the  
19 eligible taxpayer by each owner below forty percent of the amount  
20 that would be imposed for such taxable year on the conduit income  
21 as determined before application of any other allowable credits  
22 against tax;

23 (6) Small business corporations, limited liability companies,  
24 partnerships and other unincorporated organizations shall allocate



1 any unused credit after application of subdivisions (2), (3) and  
2 (4) of this subsection among their members in the same manner as  
3 profits and losses are allocated for the taxable year; and

4 (7) No credit is allowed under this article against any tax  
5 imposed by article twenty-one of this chapter.

6 (c) No carryover to a subsequent taxable year or carryback to  
7 a prior taxable year is allowed for the amount of any unused  
8 portion of any annual credit allowance. Any unused credit is  
9 forfeited.

10 (d) *Application for credit required.* --

11 (1) *Application required.* -- Notwithstanding any provision of  
12 this article to the contrary, no credit is allowed or may be  
13 applied under this article for any qualified investment property  
14 placed in service or use until the person claiming the credit makes  
15 written application to the Tax Commissioner for allowance of credit  
16 as provided in this section. This application shall be in the form  
17 prescribed by the Tax Commissioner and shall provide the number and  
18 type of jobs created, if any, by the manufacturing investment, the  
19 average wage rates and benefits paid to employees filling the new  
20 jobs and any other information the Tax Commissioner may require.  
21 This application shall be filed with the Tax Commissioner no later  
22 than the last day for filing the annual return, determined by  
23 including any authorized extension of time for filing the return,  
24 required under article twenty-one or twenty-four of this chapter

1 for the taxable year in which the property to which the credit  
2 relates is placed in service or use.

3       (2) *Failure to file.* -- The failure to timely apply the  
4 application for credit under this section results in forfeiture of  
5 fifty percent of the annual credit allowance otherwise allowable  
6 under this article. This penalty applies annually until the  
7 application is filed.

8       (e) (1) Any person or entity undertaking any construction  
9 related to any business activity included within North American  
10 Industrial Code six-digit code number 211112, the value of which is  
11 an amount equal to or greater than \$500,000, shall hire at least  
12 seventy-five percent of employees for said construction from the  
13 local labor market, to be rounded off, with at least two employees  
14 from outside the local labor market permissible for each employer  
15 per project, "the local labor market" being defined as every county  
16 in West Virginia and any county outside of West Virginia if any  
17 portion of that county is within fifty miles of the border of West  
18 Virginia.

19       (2) Any person or entity unable to employ the minimum number  
20 of employees from the local labor market shall inform the nearest  
21 office of the bureau of employment programs' division of employment  
22 services of the number of qualified employees needed and provide a  
23 job description of the positions to be filled.

24       (3) If, within three business days following the placing of a

1 job order, the division is unable to refer any qualified job  
2 applicants to the person or entity engaged in said construction or  
3 refers less qualified job applicants than the number requested,  
4 then the division shall issue a waiver to the person or entity  
5 engaged in said construction stating the unavailability of  
6 applicants and shall permit the person or entity engaged in said  
7 construction to fill any positions covered by the waiver from  
8 outside the local labor market. The waiver shall be either oral or  
9 in writing and shall be issued within the prescribed three days.  
10 A waiver certificate shall be sent to the person or entity engaged  
11 in said construction for its permanent project records.

12 (f) The amendments made to section three of this article, this  
13 section and to section two, article six-f of this chapter are  
14 enacted to provide manufacturing investment tax credit to small  
15 arms manufacturers and may be cited as the "West Virginia Small  
16 Arms Investment Act".

NOTE: The purpose of this bill is to provide manufacturing investment tax credit generally for small arms manufacturing. It amends the definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes and the definition of manufacturing for purposes of manufacturing investment tax credit.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.